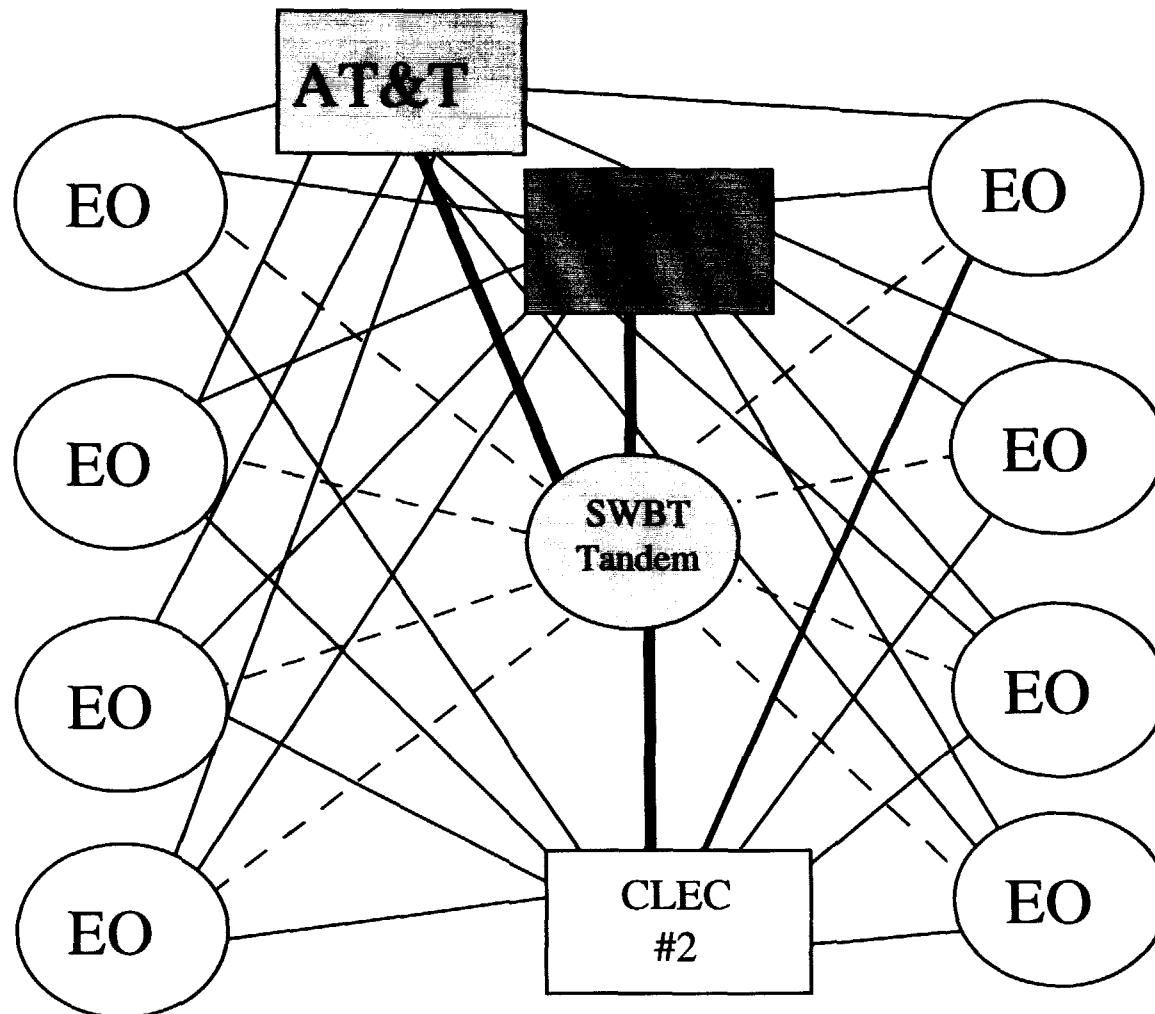


ATTACHMENT 2

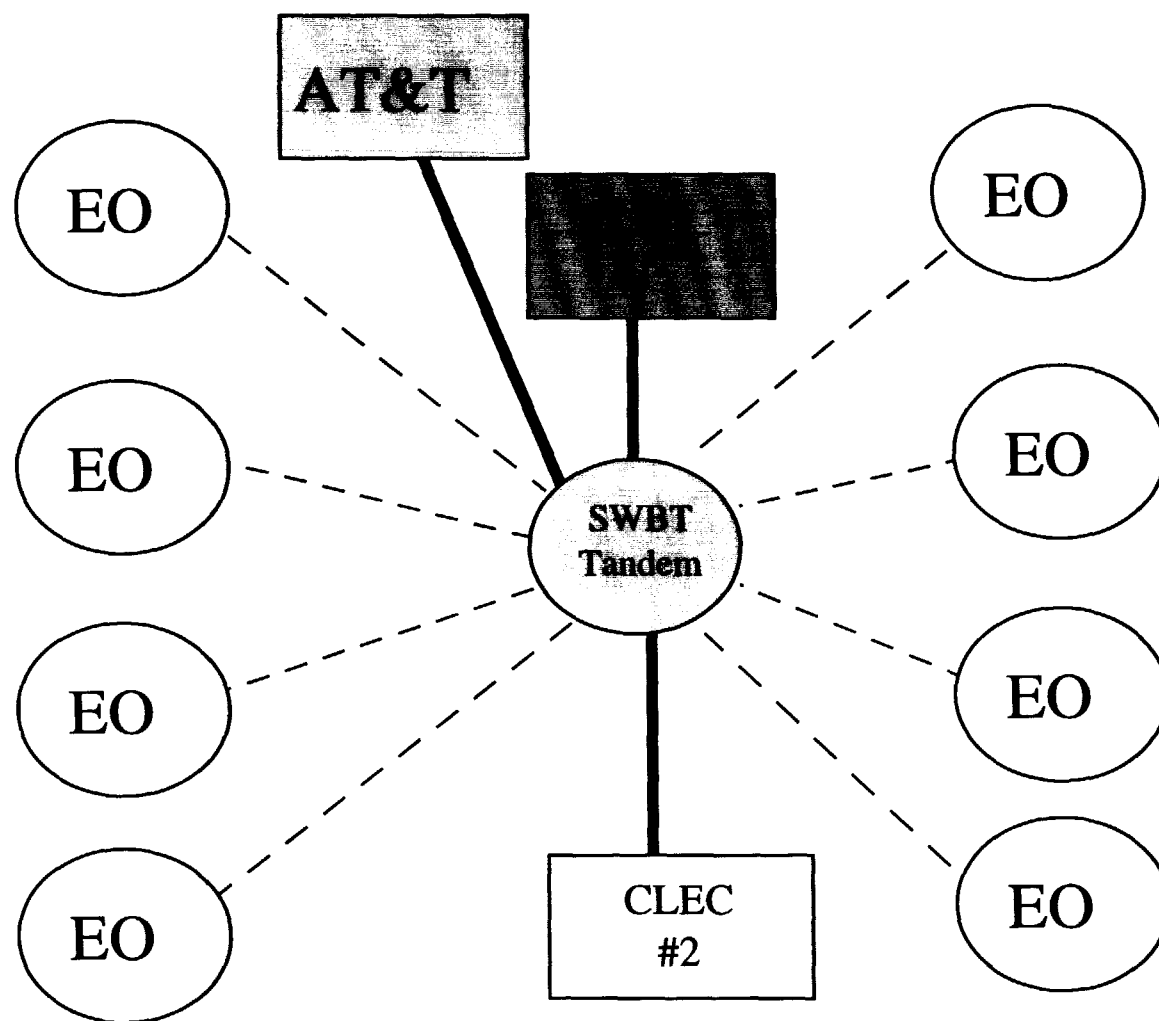
Using DID To Provide Number Portability



- Direct Trunks Only
 - Time-consuming
 - Expensive
 - Stranded investment
- No SS7 Signaling
 - No SS7-based features
 - No ISDN
 - Post-Dial Delay

ATTACHMENT 3

Using RIPH To Provide Number Portability



- Access Tandem Trunks
 - Fewer Translations
 - Less network expense
 - Reusable trunk capacity
 - Interconnection trunks used
- Supports SS7 Signaling
 - Minimal feature loss
 - ISDN compatible
 - Less Post-Dial Delay



ALL STATE* LEGAL 806-222-0510 EDS11 RECYCLED

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of

Application of SBC Communications, Inc.)	
for Authorization Under Section 271 of the)	CC Docket
Communications Act to Provide In-Region)	No. 97-121
InterLATA Services in the State of Oklahoma)	

AFFIDAVIT

OF

THOMAS C. PELTO

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT J

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Application of SBC Communications, Inc.)	
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Affidavit of Thomas C. Pelto

1. My name is Thomas C. Pelto. My business address is 919 Congress Avenue, Suite 1500, Austin, Texas, 78701. I am employed by AT&T Communications of the Southwest, Inc. as Chief Regulatory Counsel for the Southwest Region.

2. In that capacity I have become personally familiar with the negotiations for executing an interconnection and arbitration agreement between Southwestern Bell Telephone Company ("SWBT") and AT&T Communications of the Southwest, Inc. ("AT&T") in Oklahoma. I am also familiar with AT&T's business planning as it relates to entry into the local exchange market in Oklahoma, the provisions and objectives of the 1996 Act, and the Statement of Generally Available Terms ("SGAT") filed by SWBT in Oklahoma.

3. The purpose of my affidavit is to address one of the significant respects in which SWBT has failed to meet its statutory obligation to provide "nondiscriminatory access to network elements," § 251(c)(3). Specifically, SWBT claims that the intellectual property of numerous third-party vendors is or may be embedded within many of its network elements, and has taken the position that it will refuse to permit a new entrant to purchase access to those network elements unless and until the entrant either secures from those vendors a license or other agreement permitting such access, or obtains some sort of certification from the vendor

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that no intellectual property rights would be violated by such access. SWBT thus refuses to contact its vendors directly and to negotiate with them any modifications to its existing agreements that might be necessary to enable SWBT to fulfill its statutory duties, or, in the case of future agreements with its vendors, to ensure that those agreements permit such access. This is the very position advanced by SWBT, and expressly rejected by the Commission, in the Commission's recent Infrastructure Sharing Order.¹ As I will explain, SWBT's refusal will pose a substantial barrier to entry in Oklahoma, will significantly delay the time it will take new entrants actually to obtain, and then compete on the basis of, network elements, and will, even after such time, secure to SWBT a permanent and potentially insurmountable cost advantage as compared to its competitors -- and is thus unlawfully discriminatory.

Background

4. The Statement of Generally Available Terms filed by SWBT in Oklahoma provides, in pertinent part, as follows:

[The CLEC] acknowledges that its rights under this contract to interconnect with SWBT's network and to unbundle and/or combine SWBT's network elements . . . may be subject to or limited by intellectual property (including, without limitation, patent, copyright and trade secrets) and contract rights of third parties. It is the sole obligation of [the CLEC] to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may be necessary for its use of SWBT network facilities under this agreement.

Statement of Terms and Conditions, § XV, ¶ 6, p. 18.

¹ See Report and Order, ¶¶ 61-72, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96-237 (released February 7, 1997)

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5. AT&T's experience with SWBT in Texas has demonstrated the clear discriminatory effect of this provision, and the substantial barrier it poses for CLECs seeking network elements.

6. At SWBT's request, the Texas Public Utility Commission approved the insertion into the SWBT-AT&T agreement of a provision which, by its clear terms, would require AT&T prior to ordering a network element first to provide SWBT with an affidavit attesting that it has obtained "any known and necessary licensing and right-to-use agreements" from any third party vendors who supplied SWBT with the equipment that comprise that element. Texas Arbitration Award, at ¶ 96. It is my understanding that SWBT intends to apply its Oklahoma SGAT term to likewise deny CLECs access to elements unless and until they first obtain written authorizations from SWBT's vendors.

7. Although AT&T strongly objected, and continues to object, to the Texas provision, AT&T did seek to explore the likely scope of the provision's coverage. To that end, on November 20, 1996, less than two weeks after the Texas PUC's order, AT&T sent a letter to SWBT requesting that SWBT provide AT&T with "a list of all known and necessary licenses or right to use agreements applicable to subject Network Elements," as SWBT was required to do even under the Texas PUC order. A copy of that letter is attached hereto as Attachment 1.

8. In response to that letter, on December 5, 1996, SWBT sent AT&T a list of 78 separate contracts with 38 separate vendors. A copy of that letter is attached hereto as Attachment 2. With respect to each item on the list, SWBT listed a contract number and the network element (e.g., "operations systems support," "local/tandem switch," "signalling," and "databases") to which the contract purportedly related. SWBT's letter, however, did not explain

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the nature of the particular intellectual property right involved (e.g. patent or copyright); the aspect of the element covered by the agreement; or the actual limitation, if any, that such agreement might place on SWBT's ability to provide AT&T with access to the element.

9. Accordingly, on December 20, 1996, AT&T wrote SWBT a follow up letter, requesting that SWBT (1) "advise" AT&T "if it is aware that any of the listed contracts contain provisions which would require AT&T to produce a separate license from the vendor"; (2) "specify each and every contract" that so provided; and (3) "provide AT&T with copies of the relevant provisions in all such contracts." AT&T expressly stated that "AT&T w[ould] maintain the[] confidentiality" of any "proprietary" provision pursuant to a prior written nondisclosure agreement between the parties. A copy of the December 20 letter is attached hereto as Attachment 3 and a copy of the Mutual Confidentiality and Nondisclosure Agreement is attached as Attachment 4.

10. AT&T received two letters in response to this request, which are attached hereto as Attachments 5 and 6. The first, dated January 8, 1997, on behalf of David Young, SWBT's Director, Regional Sales, stated simply that the list it had provided "was for the use by AT&T to contact each supplier," and that "AT&T" should "go directly to those involved."

11. The second letter, dated the following day, was from Gary A. Juhl, SWBT's Director, Competitive Assurance. In that letter, Mr. Juhl claimed that the contracts that AT&T requested were "proprietary" and would not be provided to AT&T. Mr. Juhl further stated that SWBT would not provide AT&T with specific contact information for the vendors in question. Further, Mr. Juhl attached a new list of vendor contracts, a list that this time comprised 82 contracts with 39 vendors.

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12. Accordingly, before SWBT will provide AT&T or any other CLEC access to its network elements, the CLEC must first contact each vendor that SWBT chooses to name (39 in the case of Texas). Then, without the benefit of the original contracts or even precise information as to the relevant intellectual property aspects involved, the CLEC must inquire of the vendor whether the vendor will take the position that additional licenses must be obtained before SWBT may grant access to the relevant network element, and seek to negotiate any new or modified licenses that the vendor claims must be obtained. Then the CLEC must present whatever documentation it is able to obtain from the vendors, and await SWBT's review and approval of that documentation.

Discussion

13. For the reasons stated below, I believe that SWBT's refusal to ensure that its agreements permit CLECs to obtain nondiscriminatory access to its network elements and to obtain any amendments to those agreements that it deems necessary to provide such access, and its insistence that each CLEC instead attempt separately to negotiate its own license with each of SWBT's numerous vendors as a precondition to obtaining such access, is flagrantly discriminatory and will constitute a substantial impediment to competitive entry using unbundled elements. Indeed, SWBT's assertion of this position is nothing more than an illegitimate attempt to relitigate an argument that it previously raised, and which the Commission explicitly rejected, in the context of the implementation of the section 259 duty to allow for "infrastructure sharing." Finally, as I will explain, there is every reason to suspect that SWBT's purported intellectual property claims are either fabricated, or at a minimum substantially overblown, and that in fact

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these claims are nothing other than a tactic designed to deter UNE-based entry throughout SWBT's region.

14. The 1996 Act creates a number of new federal duties designed to encourage the development of meaningful competition in the provision of local exchange services. The most significant provision for present purposes is section 251(c)(3), which obligates incumbent LECs to provide their competitors with "nondiscriminatory access" to network elements. Compliance with this requirement is also an item in the competitive checklist. § 271(c)(2)(B)(ii).

15. In its First Report and Order, the Commission explained that to satisfy this obligation an ILEC must provide access that is "at least equal-in-quality to that which the incumbent LEC provides to itself."² Further, the Commission held that the ILEC must make any feasible modifications to its facilities that are necessary to enable the ILEC to provide that nondiscriminatory access.³

16. Under these principles, SWBT's duty should be clear. SWBT cannot contract away its obligation to comply with federal law. SWBT is henceforth prohibited from negotiating terms in licenses or other agreements that would grant SWBT preferential rights to use its network elements in ways that would exclude CLECs purchasing those same network elements. Further, SWBT must likewise undertake to negotiate with its vendors any modifications to

² See First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Aug. 9, 1996), ¶¶ 312-13, 315 ("First Report and Order").

³ See *id.*, ¶ 202 ("[I]ncumbent LEC networks were not designed to accommodate third party interconnection or use of network elements," and "[i]f incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of . . . section[] . . . 251(c)(3) would often be frustrated").

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existing licenses that might be necessary to enable it to comply with its obligation to provide nondiscriminatory access to unbundled elements.⁴ There is nothing unfair about requiring the ILEC to take steps necessary to ensure that CLECs have equal rights to use intellectual property embedded in or associated with their network elements. Like the costs of any other component of a network element, the costs of obtaining such licenses and rights-to-use are recoverable in the prices of the elements.

17. The plain import of SWBT's position and the language in its SGAT is that SWBT may use its UNEs to provide service to customers, but CLECs seeking to use those elements for precisely the same purposes may not. Notably, SWBT is not limiting its denial of access to instances in which the CLEC seeks to obtain access of a different sort, or for different purposes, than the access SWBT enjoys, but is instead claiming that it may deny to CLECs access equivalent to its own. This is a straightforward violation of SWBT's statutory duty to provide nondiscriminatory access to its network.

18. Indeed, the Commission has already rejected SWBT's precise claim in its Order implementing the infrastructure sharing obligations imposed by section 259.⁵ Section 259

⁴ This duty is no different from the obligation to which SWBT has already voluntarily committed in its SGAT to negotiate modifications to existing authorization agreements to allow SWBT to disclose subscriber directory listings to CLECs. See SGAT-Oklahoma, Appendix DAL, p. 2 ("The parties agree to request from Independent Telephone Companies (ITCs) and LSPs with whom they currently have agreement, and commit to request in future directory assistance listing negotiations with ITCs and LSPs, written authorization which would allow one Party to provide to the other Party published listing information pertaining to those ITC and LSP subscribers")

⁵ See Report and Order, ¶¶ 61-72, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96-237 (released February 7, 1997) ("Infrastructure Sharing Order").

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requires ILECs "to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services." 47 U.S.C. § 259(a). In its comments in that proceeding, SWBT specifically argued that "because incumbent LECs' networks are built upon licenses to use intellectual property, 'the sharing of any intellectual property must be conditioned upon the qualifying carrier obtaining a sufficient license from parties that have a [protectable] interest in such property.'" Infrastructure Sharing Order, ¶ 63. SWBT further claimed that the Commission lacked authority to "override any party's intellectual property rights." Id.

19. A number of parties, including the Rural Telephone Coalition and AT&T, objected to SWBT's position. AT&T noted that "[ILECs] that have obtained the right to use software generics from their switching vendors are entitled to use those facilities to serve not only their own traffic, but also to serve qualifying carriers that share the [ILEC's] infrastructure," id., ¶ 65, and that it was therefore quite unlikely that ILECs would in fact need to pay "additional costs or fees" to their vendors for such uses. At any rate, AT&T pointed out that "if qualifying carriers were required to negotiate licensing agreements with all of an [ILEC's] equipment vendors, none of which have any incentive to negotiate reasonable terms . . . , it is reasonable to assume that the carrier's ability actually to use the [ILEC's] infrastructure to serve its customers will be seriously impeded." Id.

20. The Commission's Infrastructure Sharing Order squarely rejected SWBT's claims. To begin with, the Commission expressed its belief that "in the ordinary course of providing [infrastructure sharing] to qualifying carriers," new or modified intellectual property

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"licensing will not be necessary." Id., ¶ 69. The Commission nevertheless reaffirmed its prior tentative conclusion that "whenever it is 'the only means to gain access to facilities or functions subject to sharing requirements,' section 259 requires the providing LEC to seek, to obtain, and to provide necessary licensing, subject to reimbursement." Id. (emphasis added).

21. As the Commission explained:

[W]e agree with AT&T and RTC that providing incumbent LECs may not evade their section 259 obligations merely because their arrangements with third party providers of information and other types of intellectual property do not contemplate -- or allow -- provision of certain types of information to qualifying carriers. Therefore, we decide that the providing incumbent LEC must determine an appropriate way to negotiate and implement section 259 agreements with qualifying carriers, i.e., without imposing inappropriate burdens on qualifying carriers. In cases where the only means available is including the qualifying carrier in a licensing arrangement, the providing incumbent LEC will be required to secure such licensing by negotiating with the relevant third party directly. We emphasize that our decision is not directed at third party providers of information but at providing incumbent LECs. We merely require the providing incumbent LEC to do what is necessary to ensure that the qualifying carrier effectively receives the benefits to which it is entitled under section 259.

Infrastructure Sharing Order, ¶ 70 (emphasis added).

22. There is no material distinction here between an ILEC's duty to provide for infrastructure sharing and its duty to provide access to unbundled elements. Indeed, in its Infrastructure Sharing Order the Commission concluded that carriers who did not seek to provide local exchange services in competition with the ILEC (i.e., who would serve a different territory) could lease network elements "alternatively pursuant to section 251 or pursuant to section 259." Id., ¶ 54.⁶ SWBT's refusal to negotiate any necessary licensing amendments

⁶ If any difference exist at all, section 251's requirement that access be "nondiscriminatory" would, if anything, impose greater obligations on an ILEC when providing access under section 251 than when sharing infrastructure under section 259.

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directly and to refuse to provide access to elements until CLECs first obtain their own licenses is thus flatly inconsistent with the Commission's Infrastructure Sharing Order, and is an improper effort to persist in a position that the Commission has already rejected.

23. The Commission's Infrastructure Sharing Order correctly resolved these issues. It is as discriminatory and anticompetitive for SWBT to refuse to provide access to its elements based on intellectual property concerns as it would be for SWBT to engineer, procure, or accept any other limitations on the ability of a CLEC to obtain access to a component of its network. As the Commission has recognized, "incumbent LECs have little incentive to facilitate the ability of new entrants . . . to compete against them and, thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete."⁷ The intellectual property provisions that SWBT has inserted into its Oklahoma SGAT and elsewhere are a classic example of its contrary incentives at work.

24. It would be exceedingly burdensome and costly for CLECs to obtain separate licenses from SWBT's vendors as a condition to using SWBT's network elements. To begin with, new entrants will generally have little or no bargaining power with respect to SWBT's vendors compared with the bargaining power possessed by SWBT as a consequence of its enormous volume of business. Smaller entrants are in a particularly vulnerable position. SWBT's insistence that each CLEC obtain its own licenses (and pay its own separately negotiated fees) thus violates the principle purpose of the obligation of nondiscriminatory access:

⁷ First Report and Order, ¶ 307.

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ensuring that SWBT's unique "economies be shared with new entrants."⁸ Indeed, the principal objective of these vendors in many instances is to curry favor with, and win the business of, SWBT, and they are thereby subject to pressure, explicit or implicit, to make competitive entry more difficult.

25. Further, new entrants seeking to obtain the licenses SWBT claims are necessary for them to receive nondiscriminatory access to SWBT's network elements are in a far different position than SWBT was in when it first obtained those licenses itself. SWBT chose its vendors at that time from among many alternatives in a competitive market. Now that particular vendors' intellectual property has allegedly become embedded in the network elements, however, its competitors must obtain consent from each of those specific vendors. Thus, while SWBT's costs were merely those one would expect to be incurred by a dominant purchaser in a competitive supply market, its competitors will likely have to pay multiple supracompetitive prices to a series of vendors each of whom will have become, for these purposes, a monopolist. In effect, SWBT has simply created 40 new bottlenecks from one.

26. This means that SWBT's requirement will ensure that its competitors pay a discriminatory price for any intellectual property licenses in at least two significant respects. First, CLECs will incur significant transaction costs in attempting to obtain licenses from dozens of different specific vendors -- without the competitive alternatives SWBT enjoyed -- as a precondition of entry. Second, for the same reasons, CLECs will also then pay higher unit costs for the licenses themselves.

⁸ See First Report and Order, ¶ 11.

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27. Indeed, at the same time that SWBT has imposed the requirement that each CLEC obtain its own right-to-use and other licensing agreements from third party vendors, SWBT has nonetheless included in its own cost studies the license fees and expenses that it incurs in obtaining equipment from its vendors.⁹ SWBT would thus have new entrants pay both a share of SWBT's licensing fees, and separate and additional amounts directly to SWBT's vendors -- a plainly discriminatory arrangement.

28. Moreover, SWBT's requirement discriminates against CLECs even aside from the price differential such entrants would pay vendors when compared to SWBT. The delays and other burdens that requirement imposes are at least as substantial and anticompetitive in their effect. As discussed above, in Texas SWBT has refused to share its license agreements with AT&T or to state whether any intellectual property rights would actually be violated through the provision of unbundled elements, but has told AT&T that AT&T must, without any of this information, approach each of the dozens of vendors, somehow find out whether their rights would be violated, and proceed to work out whatever agreements are necessary. Without access to the specific licenses, and without knowledge of the particular inventions or software to which patents or copyright claims pertain, it would take substantial time just for new entrants to assess whether any amendments or new licenses would be necessary. Obviously, this approach will significantly delay competitive entry.

⁹ See Southwestern Bell's Response to AT&T's Motion to Stay and Refer to the FCC, p. 8, SWBT v. AT&T Communications of the Southwest, Inc., Civ. Act. No. A 97 CA 132 SS (U.S.D.C. W. D. Tex., filed March 31, 1997) (unbundled network element prices were set based on "the costs that Southwestern Bell pays for its own uses").

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29. The anticompetitive effects of this SWBT-imposed obligation should not be underestimated. In determining which network elements to require a LEC to unbundle, the Commission expressly found either that the element is not conceivably proprietary, that its unbundling is "necessary" within the meaning of Section 251(d)(2)(A) of the Act, or both.¹⁰ Thus, for any element that might potentially contain proprietary aspects, the Commission has determined that its availability "is a prerequisite for competition" because "without such elements, [CLECs'] ability to compete would be significantly impaired or thwarted."¹¹ By preventing any CLEC from obtaining access to such network elements at nondiscriminatory prices and burdens, SWBT's SGAT requirement thus "significantly impair[s]" a CLEC's "ability to compete."

30. This obvious and significant anticompetitive effect is no mere unintended consequence. For at least two reasons, there are strong grounds for suspecting that SWBT's purported intellectual property claims are either fabrications or, at a minimum, substantially exaggerated.

31. First, governing doctrines of patent and copyright law make it unlikely that the LECs' vendors could assert valid claims against CLECs which obtain access to network elements. With respect to patent law, "[t]he patent owner's rights with respect to the product

¹⁰ See First Report and Order, ¶ 388 (loop); id., ¶ 393 (network interface device); id., ¶ 419 (switch); id., ¶ 425 (tandem switch); id., ¶ 446 (interoffice facilities); id., ¶ 481 (signaling links and STPs); id., ¶ 490 (call-related databases); id., ¶¶ 493, 497, 499 (service management system for AIN); id., ¶ 521 (operations support systems); id., ¶ 538 (operator call completion services and directory assistance).

¹¹ See id., ¶ 282.

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end with its sale, United States v. Univis Lens Co., 316 U.S. 241, 252 (1942), and a purchaser of such a product may use or resell the product free of the patent, id. at 250." Intel Corp. v. ULSI System Technology, 995 F.2d 1566, 1568 (Fed. Cir. 1993) (emphasis added). "Such further use and sale of a patented product is beyond the reach of the patent statutes under Univis Lens." Harmon, Patents and the Federal Circuit, § 6.2(c) at 210 (3d edition, 1994). Thus, when SWBT purchased a patented product from one of its vendors, that purchase would, absent unusual circumstances, have exhausted the vendor's patent rights in the product, and SWBT may now use or resell that product as it wishes. If the patent exhaustion doctrine would permit SWBT to resell outright any patented piece of equipment it had purchased from one of its vendors, SWBT may a fortiori allow its competitors access to such equipment free of any fear of prosecution by the patent holder.

32. The scope of the protections afforded software by the copyright laws similarly makes it unlikely that third party vendors would be able to raise meritorious claims in the event that SWBT provided access to network elements, such as switches, that had embedded within them protected software. The copyright laws prohibit the copying, distribution, publication, or preparation of derivative works based on, a copyrighted product. 17 U.S.C. § 106. Because a CLEC would not generally engage in copying or distribution when it provided service through unbundled elements, it seems highly unlikely that the copyright laws would impose any obstacle to SWBT's compliance with its duties to provide access to its network on an unbundled basis -- unless SWBT had procured or accepted provisions in its agreements with vendors that applied to CLECs but not to itself.

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33. Second, the nature of the access and other rights that new entrants receive when they purchase unbundled network elements likewise renders it unlikely that the intellectual property rights of others would thereby be violated. For example, the Commission has explained the process of obtaining access to switching as follows:

A competing provider will purchase and obtain the local switching element the same way it obtains an unbundled local loop, that is, by ordering, via electronic interfaces, the local switching element and particular vertical switching features. The incumbent LEC will receive the order and activate (or deactivate) the particular features on the customer line designated by the competing provider. Consequently, the incumbent LEC is not required to relinquish control over operations of the switch.

First Report and Order, ¶ 415. There is nothing in that process that appears likely to justify SWBT's claims of potential violations.¹²

34. This is confirmed by actual experience. SWBT and other LECs have for many years provided customers with access to virtually all of the network elements -- on a stand-alone basis and with no less "control" than would be exercised by a CLEC obtaining access under § 251(c)(3) -- without once claiming that providing such access to their customers violated any of their vendors' intellectual property rights. Indeed, prior to the passage of the Act, SWBT itself had provided access to less robust versions of a number of the elements that it now claims may be covered by restrictive licensing agreements. For example, although such access did not comply with the nondiscrimination, pricing, and other requirements of the 1996 Act, for quite

¹² See also id., ¶ 258 (carriers seeking shared facilities "are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis"); id., ¶ 412 ("[a] requesting carrier will deploy individual vertical features on its customers' lines by designating, via an electronic ordering interface, which features the incumbent LEC is to activate for particular customer lines"); id., ¶ 414 (same).

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some time SWBT has provided access to the functionalities of its databases, SWBT F.C.C. Tariff No. 73, § 24; signalling, SWBT F.C.C. Tariff No. 73, § 23; and dedicated transport facilities, SWBT F.C.C. Tariff No. 73, § 7. Other LECs likewise provided similar access to these and other network facilities without raising any intellectual property claims. See generally Comments of AT&T Corp., In the Matter of Petition of MCI for Declaratory Ruling, CC Docket No. 96-98 (April 15, 1997), pp. 22-28.

35. These facts substantially undermine SWBT's recently minted claims that it cannot now provide the same degree of access to its competitors -- and strongly suggest that those claims have been developed for the purpose of impeding competitive entry via unbundled network elements. SWBT has made it ultimately impossible for CLECs to say with certainty that none of its nearly 100 claims of potential violations of intellectual property rights have any validity by persistently refusing to disclose the contracts on which any such claims would be based. The foregoing analysis strongly suggests, however, that their claims have been, at a minimum, substantially inflated. It thus illustrates the perverse incentives that SWBT has to construe any even arguable ambiguity or silence in their agreements with vendors as affirmatively precluding the provision of access to CLECs.

36. Finally, because SWBT has in the past persistently mischaracterized the nature of this issue, it is important to be clear about the nature of its dispute with CLECs. Specifically, while it is not possible to determine on the limited information SWBT has provided whether any of its claims of potential violations are valid, the statutory and regulatory requirements of "nondiscriminatory access" make such a determination unnecessary. When CLECs seek to obtain the same access to network elements that SWBT now enjoys, SWBT must


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take whatever steps are necessary to provide such access. It is thus forbidden from entering into contracts that would preclude such access in the future, and must renegotiate any existing contracts that allegedly preclude such access now. SWBT's refusal to comply with these obligations, and its attempt to reassign its own duties to CLECs, are unlawful and severely discriminatory in both purpose and effect. Strict enforcement of this principle is the only means of addressing the perverse incentives that ILECs would otherwise have, and that SWBT's conduct has vividly illustrated, to use such claims to delay or foreclose competitive entry.

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I declare under penalty of perjury that the foregoing is true and accurate to the best
of my knowledge and belief.

Executed on April 29, 1997.


Thomas C. Pelto

SUBSCRIBED AND SWORN TO ME this 29th day of April, 1997.


Notary Public

My Commission Expires:

April 30, 1997



ATTACHMENT 1